

UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE BOARD OF PATENT APPEALS  
AND INTERFERENCES

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*Ex parte* WASIQ MAHOOD BOKHARI, UMAIR AZIM KHAN, ANNE  
SAJER KOHNEN, and QUINTON YVES ZONDERVAN

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Appeal 2007-2634  
Application 09/902,929  
Technology Center 2100

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Decided: November 30, 2007

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Before HOWARD B. BLANKENSHIP, JEAN R. HOMERE, and ST. JOHN  
COURTENAY III, *Administrative Patent Judges*.

BLANKENSHIP, *Administrative Patent Judge*.

ORDER REMANDING TO THE EXAMINER

The filing date of the instant application is July 10, 2001. All of the pending claims (1-44) are rejected under 35 U.S.C. § 103(a). The rejections rely on a printed copy of a document, “Firepad FireViewer Suite User’s Guide, registered 7 March 2000 . . . .” (Ans. 3.)

The Answer does not specify a basis for regarding the document as prior art. However, in a rejection mailed September 9, 2004, the document is asserted to be a reference under 35 U.S.C. § 102(b) -- i.e., “the invention was . . . described in a printed publication . . . more than one year prior to the date of the application for patent in the United States . . . .”

The only apparent date in the file copy of the document, however, appears at page 2, which indicates a copyright year of 2001. The Answer’s statement of “registered 7 March 2000” when referring to the document appears to relate to a U.S. Copyright Office search result that indicates Firepad, Inc. deposited a computer program printout with that office, which was “[r]egistered: 7Mar00.”

Without reaching the question of whether depositing a copy of a computer program printout with the U.S. Copyright Office qualifies as “publication” of a document as contemplated by 35 U.S.C. § 102, we find that the Examiner has provided no basis for the assumption that the FireViewer Suite User’s Guide was “registered” March 7, 2000. Moreover, there is no evidence provided to link whatever computer program listing was registered on March 7, 2000 -- and whatever version of that program -- to the user’s guide that forms the basis of the instant rejections.

If the instant rejections are to be maintained, the Examiner must provide a supplemental answer that explains why the “Firepad FireViewer Suite User’s Guide” should be considered prior art with respect to Appellants and the claimed subject matter on appeal.

Current Office policy requires that any supplemental answer be approved and signed by a Technology Center Director or designee. *See Manual of Patent Examining Procedure* (MPEP) § 1211.01 (8th ed., Rev. 5, Aug. 2006).

If a supplemental examiner’s answer is written in response to this remand, failure by Appellants to exercise one of the two options specified by 37 C.F.R. § 41.50(a)(2) (2007) will result in *sua sponte* dismissal of the appeal as to all the claims that are rejected.

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This application, by virtue of its “special” status, requires an immediate action. *See* MPEP § 708.01. It is important that the Board be informed promptly of any action affecting the appeal in this case.

REMANDED

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Zilka-Kotab, PC  
P.O. BOX 721120  
SAN JOSE CA 95172-1120